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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,078	10/31/2003	Donald E. Weder	8404.015	1377

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EXAMINER

FIDEI, DAVID

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,078

Applicant(s)

WEDER, DONALD E.

Examiner

David T. Fidei

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/31/03</u> . | 6) <input type="checkbox"/> Other: ____. |

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embodiment of figure 58 having a reservoir, closed bottom or any of the other combinations claimed must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The abstract of the disclosure is objected to because it is not descriptive of the embodiment claimed. Correction is required. See MPEP § 608.01(b).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,702,114. Although the conflicting claims are not identical, they are not patentably distinct from each other because the presently claimed subject matter does not include perforations but adds the closure flap of claims 6, 16 and 23. It would have been within the level to exclude perforations as a matter of ordinary skill for the reason that the use of perforations is dependent upon whether one desires to separate the wrapper or not. Also, the present specification paragraph [0224] recognizes that it is within the level of ordinary skill to use any of the sheets or sleeves described herein to be modified by the addition of an upper or lower closure flap.

5. Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,000,544 in view of Cullen et al (Patent no. 4,813,791) and Eckler (Patent no. 2,688,914). The difference between the present claims to those recited in Patent no. 6,000,544 resides in a reservoir attached to the inner surface of the sleeve and a closure flap extending from the upper end of the tubular sleeve.

Cullen et al (Patent no. 4,813,791) teaches a bag having an inner surface with a reservoir attached to the inner surface as shown in figures 5 and 6. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a reservoir as taught by Cullen, in order to provide a medium for containing materials.

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Eckler discloses a wrapper in figures 1, 2 and 4 where it is notoriously well known to provide a closure flap 15, 21 and 38 respectively. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a closure flap as taught by Eckler, in order to provide cover for the top of the wrapper.

6. Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of U.S. Patent No. 6,142,299 in view of Cullen et al (Patent no. 4,813,791) and Eckler (Patent no. 2,688,914). The difference between the present claims to those recited in Patent no. 6,142,299 resides in a reservoir attached to the inner surface of the sleeve and a closure flap extending from the upper end of the tubular sleeve.

Cullen et al (Patent no. 4,813,791) teaches a bag having an inner surface with a reservoir attached to the inner surface as shown in figures 5 and 6. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a reservoir as taught by Cullen, in order to provide a medium for containing materials.

Eckler discloses a wrapper in figures 1, 2 and 4 where it is notoriously well known to provide a closure flap 15, 21 and 38 respectively. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a closure flap as taught by Eckler, in order to provide cover for the top of the wrapper.

7. Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 5,845,775 in view of Cullen et al (Patent no. 4,813,791) and Eckler (Patent no. 2,688,914). The difference between the present claims to those recited in Patent no. 5,845,775 resides in a reservoir attached to the inner surface of the sleeve and a closure flap extending from the upper end of the tubular sleeve.

Cullen et al (Patent no. 4,813,791) teaches a bag having an inner surface with a reservoir attached to the inner surface as shown in figures 5 and 6. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a reservoir as taught by Cullen, in order to provide a medium for containing materials.

Eckler discloses a wrapper in figures 1, 2 and 4 where it is notoriously well known to provide a closure flap 15, 21 and 38 respectively. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a closure flap as taught by Eckler, in order to provide cover for the top of the wrapper.

8. Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 5,595,048 in view of Cullen et al (Patent no. 4,813,791) and Eckler (Patent no. 2,688,914). The difference between the present claims to those recited in Patent no. 5,595,048 resides in a reservoir attached to the inner surface of the sleeve and a closure flap extending from the upper end of the tubular sleeve.

Cullen et al (Patent no. 4,813,791) teaches a bag having an inner surface with a reservoir attached to the inner surface as shown in figures 5 and 6. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a reservoir as taught by Cullen, in order to provide a medium for containing materials.

Eckler discloses a wrapper in figures 1, 2 and 4 where it is notoriously well known to provide a closure flap 15, 21 and 38 respectively. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a closure flap as taught by Eckler, in order to provide cover for the top of the wrapper.

9. Claims 1-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,428,939 in view of Cullen et al (Patent no. 4,813,791) and Eckler (Patent no. 2,688,914). The difference between the present claims to those recited in Patent no. 5,428,939 resides in a reservoir attached to the inner surface of the sleeve and a closure flap extending from the upper end of the tubular sleeve.

Cullen et al (Patent no. 4,813,791) teaches a bag having an inner surface with a reservoir attached to the inner surface as shown in figures 5 and 6. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a reservoir as taught by Cullen, in order to provide a medium for containing materials.

Eckler discloses a wrapper in figures 1, 2 and 4 where it is notoriously well known to provide a closure flap 15, 21 and 38 respectively. It would have been obvious to one of ordinary skill in the art to modify the prior patented sleeve by including a closure flap as taught by Eckler, in order to provide cover for the top of the wrapper.

10. An inventor name search for Donald Weder yields some 1965 records which is beyond the Patent Examiner's resources to identify all patents/applications with conflicting claims. Since applicant has already identified several Patents that may contain conflicting subject matter through terminal disclaimer already provided, it is incumbent upon applicant to provide terminal disclaimers to all other potential patents/applications to which also presents conflicting claims.

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

11. "In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)", see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).


Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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David T. Fidei
Primary Examiner
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July 7, 2005